

FREE FOR ALL



ICE deports Sierra Leonean man who escaped civil war — page 6

FALL 2017



TRANSGENDER STUDENTS' RIGHTS INTACT AT BOYERTOWN

A federal court has upheld a Berks County school district's practice of respecting the gender identity of its students.

The practice at schools in the Boyertown Area School District has included allowing students to use rest rooms and locker rooms based on their gender identity, while allowing any student, for any reason, to use more private facilities. Four students, represented by the Alliance Defending Freedom, sued the school in an attempt to bar transgender students from the girls' and boys' facilities, but their request for a preliminary injunction was denied by federal district court Judge Edward G. Smith on August 25.

In his opinion, Judge Smith wrote, "This court agrees...that high school students such as the plaintiffs here... have no constitutional right not to share restrooms and locker rooms with transgender students whose sex assigned at birth is different from theirs."

The ACLU of Pennsylvania, the ACLU's LGBT and HIV Project, and cooperating counsel from Cozen O'Connor represent the Pennsylvania Youth Congress (PYC), an LGBTQ youth advocacy group with members at Boyertown Area Senior High. With our legal help, PYC intervened to

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OUR OVERARCHING VALUES



By Reginald T. Shuford
Executive Director

Several years ago, the ACLU-PA staff and I undertook the task of determining our priority issues. Our staff, our board, and our members are passionate about many civil liberties issues, and in order to avoid being pulled in too many different directions, we decided that we needed to determine the most significant challenges of the day to keep our work focused.

In the midst of that discussion, we repeatedly returned to the same question: Where do free speech and racial justice fall on this list? As we talked, we recognized that many of the most

urgent civil liberties challenges before us were touched by both of these concepts. Without a guarantee of free speech, we can't advocate for what we care about. And racial inequality poisons American life at many levels, including in the criminal justice system, access to the vote, and immigration policy.

Ultimately, we concluded that free speech and racial justice are values that span all of our work and that we would identify them as such, rather than as priority issues.

In August, we were all horrified by the events in Charlottesville, Virginia, where white supremacists were on the march, spewing their vile worldview and motivating one of their kind to drive a car into a crowd of counter protesters, killing Heather Heyer.

In the days that followed, debate raged about the tension between free speech and racial justice. That discussion

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FROM THE VICE PRESIDENT



Dear ACLU-PA supporter,

On November 9, 2016, the day after Election Day, the national ACLU took out an ad featuring an angry photo of the new president-elect, with the banner headline, “See You in Court.” During the primary election to choose the Democratic and Republican nominees in the 2017 race for district attorney of Philadelphia, the ACLU of Pennsylvania hired and fielded dozens of canvassers—many of them formerly incarcerated—to ring doorbells, promote our Smart Justice agenda, and encourage our members to vote for whichever candidate they found most likely to advance those issues. Some have asked, has the ACLU become more political? Too political? Is our nonpartisan stance a thin charade? The answer is no to all these questions.

The ACLU never has participated and never will participate in partisan or electoral politics by endorsing or opposing candidates. There is not a single politician, Democrat or Republican, whom the ACLU stands with 100 percent and none we are unwilling to criticize. But our work is and always has been intensely “political.” We pursue the enforcement and expansion of civil rights and civil liberties for all, not as abstract ideas, but as a time-tested strategy for achieving a more just society that embraces and nourishes human freedom and equality.

The founders of the ACLU were not academics and lawyers. They were a group of mostly young activists, men and women together, many of whom had been jailed because they spoke out and agitated for the progressive causes of the World War I era: peace, birth control, labor unions, women’s suffrage, immigrants’ rights, and anti-lynching. They knew from personal experience that the criminal justice system could be a tool of repression and an engine of racial injustice and, therefore, sought to reform it.

The ACLU’s vision, of course, has matured and expanded since 1920; it now includes international human rights concerns that have common roots with civil liberties principles, for example. An increased understanding of the central role of institutional racism in deprivations of civil liberties has certainly deepened our work toward racial justice. These issues will not be resolved outside the political process. So, yes, while remaining deeply principled, the ACLU is also political. But it is not “too political,” and it is not more “political” than it has always been.

Peter Goldberger, Vice President
ACLU of Pennsylvania

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especially struck a nerve with ACLU staff, across the country, who come to work every day with a burning passion for equality for all. As Lee Rowland, an attorney in our national office, has said, “Nobody who works at the ACLU gets up in the morning to represent a Nazi.”

I’m writing this not to make news or announce a new policy but instead to reinforce to you, our members, the ACLU of Pennsylvania’s ongoing commitment to both racial justice and free speech. Our staff and I are all too aware that sometimes these values are in tension with each other, as the First Amendment guarantees the speech rights of people who do not believe in racial equality. We are also hyper-conscious of the reality that our nation has made far greater progress in building up the right to free speech

than we have in guaranteeing racial justice and ending white supremacy. As we move forward in these trying times, we know where we want to go. And we’ll remain true to our values to get there.

Onward,

Reggie Shuford
Executive Director
ACLU of Pennsylvania

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defend the practice because its members would have been harmed if the plaintiffs had been successful.

An appeal by the plaintiffs is pending. More information and updates are available at aclupa.org/Boyertown.

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The official registration and financial information of the American Civil Liberties Union of Pennsylvania may be obtained from the Pennsylvania Department of State by calling toll-free, within Pennsylvania, 1-800-732-0999. Registration does not imply endorsement.



Amanda Geraci was restrained by the neck by a Philadelphia police officer while trying to photograph the arrest of a protester at the Pennsylvania Convention Center in 2012.

FEDERAL COURT AFFIRMS FIRST AMENDMENT RIGHT TO RECORD POLICE IN PUBLIC; NEW LAW LIMITS ACCESS TO POLICE VIDEOS

A court ruling on the right of citizens to record the police and a new law limiting public access to recordings from police cameras confirm that the most effective tool for police accountability is a smartphone in your pocket.

On July 7, ACLU-PA and our co-counsel at Langer, Grogan & Diver, P.C.; Kairys, Rudovsky, Messing, Feinberg & Lin; and the University of Pennsylvania Law School won a victory for the right to observe and record the police. A three-judge panel on the U.S. Court of Appeals for the Third Circuit recognized that the First Amendment protects this right in a landmark ruling in favor of Richard Fields and Amanda Geraci. In September 2012, Amanda Geraci attended an anti-fracking protest at the Philadelphia Convention Center as a legal observer and was pushed and pinned by a police officer when she attempted to record the arrest of a protester. A year later, Richard Fields, a Temple University student,

was arrested, detained, and charged with a crime after he took a photograph of police breaking up a house party.

“Every Circuit Court of Appeals to address this issue...has held that there is a First Amendment right to record police activity in public,” wrote the court in its opinion. “Today we join this growing consensus. Simply put, the First Amendment protects the act of photographing, filming, or otherwise recording police officers conducting their official duties in public.”

Fields and Geraci are the latest in a series of lawsuits ACLU-PA filed against the city of Philadelphia to end the unlawful practice of Philadelphia police officers arresting citizens in retaliation for observing the police performing their duties.

The appeals court’s decision came on the same day that Pennsylvania Governor Tom Wolf signed Senate Bill 560, legislation which

governs and expands the use of police cameras.

ACLU-PA opposed the legislation because it gives law enforcement agencies wide latitude to deny public access to police-produced videos. Under S.B. 560, which is now Act 22, audio and video recordings from police body-worn and dashboard cameras are exempt from Pennsylvania’s public records law, creating restrictions for those who hope to obtain the footage.

“Open records laws require agencies to justify why a government record should be concealed from the public,” said Elizabeth Randol, ACLU-PA’s legislative director. “Act 22 shifts this burden to the requesters, requiring them to justify why a government record should be made available to the public. These hurdles offset any sense of police accountability that the body cameras may provide.”

Read more about these cases at aclupa.org/copwatch. ■



Name: Waqar Rehman

Hometown: Born and raised in Philadelphia (and proud of it!)

Your school and major/area of study: Villanova University School of Law, 2L

What do you do as a volunteer for the ACLU of Pennsylvania?

I am a legal intern at ACLU-PA. As an intern, I help the legal staff with research on current and upcoming cases. I will also be working to advance the ACLU-PA's priority policies, including policies on the school-to-prison pipeline and criminal justice reform.

How long have you volunteered with the ACLU of Pennsylvania?

I started with the intake department in 2011. Afterwards, I became a member of the ACLU-PA's Young Leaders Outreach Team, a new initiative to increase awareness of the ACLU's mission among young people.

How did you first hear about the ACLU of Pennsylvania?

In 2011, I was searching for volunteer opportunities to work on the issues I am passionate about. An internet search led me to learn about the ACLU-PA. I was always aware of the ACLU but initially thought there was only a national office. It speaks to the

strength of the ACLU that it has state and local chapters throughout our country.

Why is volunteering with the ACLU of Pennsylvania important to you?

The ACLU of Pennsylvania's holistic approach to protecting civil liberties is what is important to me. In addition to lawyers, the ACLU-PA also includes social workers, communications directors, technology experts, fundraising experts, and reporters.

What civil liberties issue(s) are you most passionate about and why?

I am most passionate about criminal justice issues. There is this prevailing perception that criminal justice issues are only pertinent to those who work in courts, police departments, and incarcerated persons. But it affects all of us. And how we practice criminal justice says something about who we are as a society.

What do you do when you're not volunteering for the ACLU of Pennsylvania?

I am an avid runner. A day does not go by where I do not make time for myself and go for a run somewhere between 5 to 7 miles. I am also forever searching for a new place to try pancakes. ■

UNDOCUMENTED LAW SCHOOL GRAD SEEKS A LAW LICENSE

Parthiv Patel recently celebrated two significant achievements in his young life. In 2016, Parthiv graduated from Drexel University's Kline School of Law, and that summer, he passed the Pennsylvania bar exam. And yet, despite these successes, his application for his law license was denied. The problem? Parthiv, who is 26, is undocumented.

Parthiv came to the United States from India when he was five years old. The U.S. is the only country he remembers, and he has worked hard and stayed out of trouble. He didn't even know he was undocumented until he applied to college.

In 2012, President Obama implemented a new program for young people in Parthiv's situation – Deferred Action for Childhood Arrivals, or DACA. A person who gains approval through DACA can feel safe in knowing that the government will not seek to deport them, and they have work authorization while their DACA status is in good standing.

In September, the Trump administration announced that it will phase out DACA over the next six months.

The ACLU of Pennsylvania is helping Parthiv gain admission to the bar. In the meantime, we encourage you to contact your members of Congress in support of the bipartisan DREAM Act, which will assure a path to citizenship for young people like Parthiv. Learn more at action.aclu.org. ■



WITH HELP FROM ACLU-PA, NAVAL OFFICER CONTINUES TO PLAY ‘TAPS’

Despite his home borough’s effort to shut him down, an active duty naval officer from York County continues to broadcast “Taps” nightly from his backyard, after an assist from the ACLU of Pennsylvania.

Lt. Commander Joshua Corney has played a 57-second recorded version of the military bugle call every evening before 8 p.m. for two years through a speaker system on his five-acre property in Glen Rock, near the Maryland border. Corney pledged to honor his fellow service members, especially those who lost their lives in combat, after his latest return state-side from multiple tours of duty in Afghanistan and Iraq.

The nightly tribute carried on largely without controversy. But when a borough resident complained this spring,

the borough issued a cease-and-desist order to Corney, citing its nuisance ordinance, with threats of criminal fines. The borough had not previously enforced the ordinance against other noisemakers in Glen Rock, including a church that plays bells every hour and hymns twice a day and a restaurant that hosts live music. Corney was singled out while others were not.

ACLU-PA intervened by sending a letter to the borough council on Corney’s behalf, citing his First Amendment right to play “Taps” on his property, at a level no louder than other commonly heard sounds in the community. Fortunately, cooler heads prevailed. The borough opted not to enforce its threat of fines, Lt. Commander Corney restarted his tribute to his fellow service members, and he and the borough are discussing a long-term solution.



Lt. Commander Joshua Corney plays “Taps” from these speakers on his property in Glen Rock, York County, as a nightly tribute to his fellow service members.

More information about this case is available at aclupa.org/taps. ■

THE GOVERNMENT CAN'T BILL YOU FOR YOUR FREE SPEECH



ACLU-PA supporters gathered at the weekly Tuesdays with Toomey action in Harrisburg in August.

Imagine if Dr. Martin Luther King, Jr., future Congressman John Lewis, and their compatriots in the civil rights movement had been sent an invoice for the salaries and overtime costs of Sheriff Bull Connor and his deputies, the very people who unleashed harassment, beatings, and unjust arrests on the marchers. Legislation currently before the state Senate could make such a scenario possible for today’s protesters who end up on the wrong side of the law.

Senate Bill 754 allows a court to issue an order holding a person convicted of a misdemeanor or felony associated with a demonstration liable for the “public safety response costs” incurred by government agencies. The simple, nonviolent act of blocking a sidewalk could lead to a person being on the hook for thousands of dollars in fees.

While there are certainly public costs for staffing public demonstrations, these are collective financial responsibilities for which we pay taxes. That’s

the cost of running the business of government.

If this bill is enacted, it is doubtful it could withstand a constitutional challenge. Courts, of course, can already impose fines and restitution costs for expenses associated with a specific offense. But it would be unconstitutional to hold someone—even those convicted of protest-related offenses—liable for costs associated with other people’s actions or costs incurred to provide general public safety support at a demonstration.

SB 754 is not the only bill targeting demonstrators. SB 652, which is also before the state Senate, imposes severe penalties for criminal trespassing and other offenses on “critical infrastructure” facilities. In many cases, what are currently summary or misdemeanor offenses are enhanced to second- and first-degree felonies.

These bills offer valuable insight into how our legislators perceive public protests and the worrisome ways they choose to respond.

Free speech is free. The government can’t send you an invoice. ■

ICE DETAINS AND DEPORTS SIERRA LEONEAN MAN WHO ESCAPED CIVIL WAR



On August 15, ACLU-PA filed a federal lawsuit against Immigration and Customs Enforcement (ICE) on behalf of Mamadu Balde—a Sierra Leonean man who was detained in York County Prison, even as the government had been unable to deport him to his native country. Sierra Leone, unable to verify Balde’s citizenship and nationality, had refused to issue travel documents to him for the past five years.

In mid-September, after the lawsuit was filed, the Sierra Leonean government bowed to pressure from the U.S. State Department, which threatened to impose visa sanctions on the country if they did not cooperate on deportations. Sierra Leone issued travel documents for Mr. Balde, and he was deported in September.

Balde arrived in the U.S. in 1999 after escaping the civil war in Sierra Leone. A member of the minority Fulani tribe, he had endured extreme hardship. He was forever separated from his parents and sister, his town

attacked by a rebel group called the Revolutionary United Front, his home burned down, and his personal documents destroyed.

Balde was ordered deported in 2011 because he entered the country without proper papers. ICE imprisoned Balde for nine months in 2012 but placed him on supervised release for over four-and-a-half years because Sierra Leone would not accept him. On June 17, 2017, ICE revoked Balde’s release and arrested him, despite his full compliance with the terms of his supervision, no criminal violations, and a seven-year marriage to a U.S. citizen. They also had no reason to believe at the time that Sierra Leone would now accept Balde.

An employee of the ride service Uber before he was imprisoned, Balde found himself unable to financially support his teenage niece and nephew, who live in New York and were orphaned when his sister died. Now that he has been deported—after fleeing turmoil 18 years ago and making a new life for himself in the U.S.—Balde’s life will be upended once again.

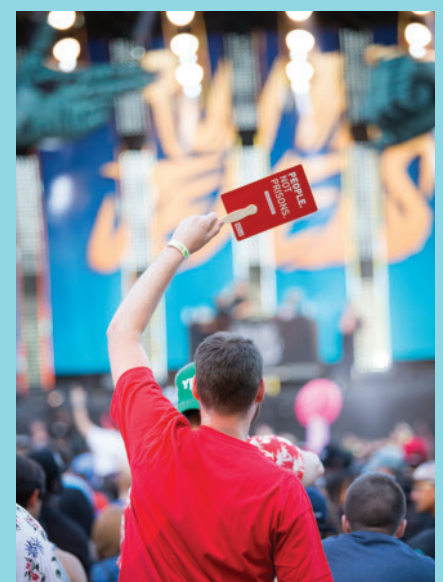
The complaint in *Balde v. Doll* states that ICE violated Mr. Balde’s right to due process and indefinitely detained him in violation of the U.S. Constitution. The lawsuit was filed in federal court in the middle district of Pennsylvania, with cooperating counsel from JBM Legal, LLC in Pittsburgh. Once Sierra Leone agreed to receive Balde, his constitutional claim vanished. We remain hopeful that Balde will be able to re-enter the country at some point in the future because he is married to a U.S. citizen.

For more updates on this case, visit aclupa.org/Balde. ■

ACLU-PA TAKES ‘SMART JUSTICE’ MESSAGE TO CONCERTGOERS

Concertgoers in Philadelphia heard the ACLU’s “smart justice” message at the annual Budweiser Made In America Festival over Labor Day weekend. For the first time in the festival’s six year history, the ACLU of Pennsylvania was one of the beneficiary organizations, along with the United Way of Greater Philadelphia and Southern New Jersey.

ACLU-PA staff and more than 100 volunteers met people at the gates with fans that read “Resist” and “People. Not Prisons” on opposite sides. Our staff and volunteers also engaged people in the Cause Village, where they had conversations about reforming the criminal justice system and could learn more about getting involved in defending civil liberties. ■



NEW STAFF AT THE ACLU OF PENNSYLVANIA

The ACLU of Pennsylvania recently welcomed three new employees in three new staff positions.



In July, **Nicholas Pressley** joined ACLU-PA as field manager, following a stint as the campaign manager of the ACLU's Vote Smart Justice Campaign during the Philadelphia district attorney's race. He became a political field operative in 2014 with the Allyson Schwartz for PA Governor campaign, where he was hired as a lead field organizer in Philadelphia after initially joining the campaign as a volunteer. In 2016, Nick was the deputy data director at Next Gen Climate PA, focusing on turnout among millennial voters on college campuses in the presidential election. Nick is from State College and works from ACLU-PA's new office there.



Golnaz Fakhimi joined the ACLU-PA in October as an immigrants' rights staff attorney. She previously held staff attorney positions with the International Justice Network (IJN), The Bronx Defenders, and Appellate Advocates. With IJN, Golnaz fought for the release of non-citizens tortured and imprisoned abroad by the U.S. military for years without charge or trial. Golnaz graduated from the City University of New York School of Law and has undergraduate degrees in the Plan II Liberal Arts Honors Program and Mathematics from the University of Texas at Austin.



Also in October, **Nyssa Taylor** joined ACLU-PA as criminal justice policy counsel. Before joining ACLU-PA, Nyssa was the Title IX Manager at Rowan University, where she was responsible for ensuring the university's compliance with Title IX of the Education Amendments of 1972. Nyssa also served as an assistant public defender at the Defender Association of Philadelphia from 2005 to 2016. While at the Defender Association, she engaged in strategic litigation focused on criminal justice reform and was responsible for the appellate briefs that overturned Pennsylvania's long-time ban on expert witnesses in identification cases. Nyssa earned her Juris Doctor from Temple University, Beasley School of Law in 2005 and a Bachelor of Arts in Religion from Swarthmore College in 2000.

TRANSGENDER TO THE TABLE: COMMUNITY CONVERSATIONS IDENTIFY NEEDS OF PA'S TRANS COMMUNITY

Throughout 2017, ACLU-PA staff has traveled all over the commonwealth to host community conversations with transgender Pennsylvanians as part of our Transgender Education and Advocacy Project, or TEAP, in collaboration with national ACLU.

Naimah Sanchez, ACLU-PA organizer and transgender advocacy coordinator, and Julie Zaebst, senior policy advocate at ACLU-PA, have hosted eight events to hear feedback about the lives of transgender people in Pennsylvania, which will help direct ACLU-PA's ongoing advocacy for trans equality.

With the kickoff event in February, these conversations have been held in Philadelphia, Pittsburgh, Harrisburg, Allentown, Erie, and State College.



Naimah Sanchez addresses the audience at a recent community conversation in Philadelphia.

Naimah, Julie, and those in attendance have shared their thoughts about discrimination in public spaces and in healthcare and on the challenges of interacting with the criminal justice system, among other topics.

The project's work will continue in the months ahead with trainings on self-advocacy, "know your rights" presentations, and leadership development. ■

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FANS OF THE ACLU OF PENNSYLVANIA



Our fans were at the Greater Pittsburgh chapter's annual picnic in July. And our members were, too!



A princess at the Pride Festival of Central PA in Harrisburg wanted to know more about civil liberties.



You're never too young to know your rights.